Supreme Court, U.S.
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No. 041065

IN THE

Supreme Court of the United States

INTERCONTINENTAL ELECTRONICS, S.p.A.,
a foreign corporation,
Petitioner,

v.

AMERICAN KEYBOARD PRODUCTS, INC.,
a Michigan corporation,

ROBERT C. KOTZ and GREGORY WYSOCKI,
jointly and severally,
Respondents.

Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner Was Denied Due Process When Service Of A Counterclaim Was Made Only Upon An Attorney Who Filed A Complaint And Began Prosecuting A Lawsuit Solely In Petitioner's Name—Without Petitioner's Authorization, Knowledge Or Participation.

2. Whether Petitioner Was Denied Due Process And/Or An Opportunity To Defend When Served With Notice Of Hearing On Entry Of A $2,552,012.97 Default Judgment Against It Where Such Notice Was: (1) Sent By U.S. Mail And Registered Mail From The United States To Italy; (2) Received The Day Before The Hearing; And, (3) Written In English When Petitioner's Language Was Italian.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Intercontinental Electronics, S.p.A. by its undersigned attorneys, hereby furnishes the following disclosure statement in compliance with Supreme Court Rules 14(b) and 29.6:

1. Full Name of Party Represented: Intercontinental Electronics, S.p.A.
2. Is Party a Corporation?: Yes
   a. Parent Corporation: None
   b. List of Corporate Stockholders that are Publicly Held Companies Owning 10% or More of the Stock of Represented Party: None

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS AND ORDERS BELOW

On May 15, 2002, the Michigan Circuit Court for Oakland County entered a default judgment against Petitioner in the amount of $2,552,012.97. *Intercontinental Electronics, S.p.A. v. American Keyboard Products, Inc., et al.*, Oakland CC No. 00-024354-CK (Unpublished). On June 12, 2002, the Circuit Court denied Petitioner's Motion to Vacate the Default Judgment. *Id.* On July 2, 2002, Petitioner filed an appeal to the Michigan Court of Appeals. On March 18, 2004, the Court of Appeals affirmed the default, but reduced the amount of the default judgment to $1,552,012.97. *Intercontinental Electronics, S.p.A. v. American Keyboard*

Products, Inc., et al., COA No. 242455 (Unpublished). On October 25, 2004, the Michigan Supreme Court declined review of the decision of the Michigan Court of Appeals. *Intercontinental Electronics, S.p.A. v. American Keyboard Products, Inc., et al.*, SC No. 126058 (Unpublished).

JURISDICTIONAL STATEMENT

On March 18, 2004, the Michigan Court of Appeals affirmed the default, but reduced the amount of the default judgment to $1,552,012.97. In so doing, the Michigan Court of Appeals, like the trial court, despite acknowledging the possibility that Petitioner may not be a real party-plaintiff to the lawsuit and opposing counsel may not represent Petitioner, held that Petitioner received service of process sufficient to satisfy due process requirements under the Fourteenth Amendment of the United States Constitution when Respondents served opposing counsel. Moreover, the Court of Appeals found that service of the notice of the default judgment hearing was sufficient to satisfy due process requirements under the Fourteenth Amendment of the United States Constitution because notice of the hearing was deposited in the United States mail seven (7) days prior to the hearing—consistent with Michigan statute—despite the fact that the notice was not received by Petitioner in Italy until the eve of the hearing halfway across the globe.

On October 25, 2004, the Michigan Supreme Court declined review of the decision of the Michigan Court of Appeals. This Court has jurisdiction over this matter under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS

The Fourteenth Amendment to the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the

United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., 14th Amend.

MISC.

Hague Convention on Service Abroad (See Appendix at 20)

STATUTORY PROVISIONS

MCR 2.107 (See Appendix at 17)

MCR 2.201 (See Appendix at 18)

MCR 2.603 (See Appendix at 19)

STATEMENT OF THE CASE

1. *Respondents Fail To Pay Their Debt To Petitioner.*

Intercontinental Electronics, S.p.A. ("Petitioner") is an Italian corporation that exports electronic pianos from Italy to the United States. (Appendix at 5, Ex. 1, ¶3). American Keyboard Products, Inc. ("AKP"), a Michigan corporation, entered into an agreement with Petitioner to distribute, in the United States and Canada, pianos exported from Italy by Petitioner. (*Id.*, Ex. 1, ¶4). During the course of the parties' relationship, AKP became indebted to Petitioner for more than $85,000 worth of goods, which Petitioner delivered, but for which Petitioner was not paid. Although AKP paid some of its debt, in 1998 it refused, or otherwise became unable, to pay the remaining balance. (*Id.*, Ex. 1, ¶¶5-9.)

2. *Petitioner Subrogates Its Claim Against Respondents To Petitioner's Insurer.*

As a result of the bad debt, Petitioner submitted a claim to EULER-SIAC Societa Italiana Assicurazione Crediti S.p.A. ("EULER SIAC"). EULER SIAC is an Italian insurance

company that provides coverage to Italian businesses for bad foreign (*i.e.*, non-Italian) contractual debt. EULER SIAC paid Petitioner's claim arising from the AKP debt. As a condition of this payment, Petitioner became obligated, under Italian law, to allow EULER SIAC to pursue a subrogation action against AKP. (*Id.*, ¶¶10-11, 13.)

3. *KKG&R And Euler File Suit Against Respondents Solely In Petitioner's Name—Without Petitioner's Knowledge, Authorization Or Participation.*

In furtherance of its subrogation rights, EULER SIAC's United States' based sister corporation, EULER ACI Collection Services, Inc. ("EULER ACI") (collectively, "EULER"), hired Richard Roosen of the Michigan law firm of Kahn, Kahn, Gibson & Roosen, P.C. (collectively, "KKG&R") to collect the debt from AKP. Accordingly, KKG&R filed a collection action against AKP. (*Id.*, ¶12). Although EULER hired KKG&R, and was the real party in interest, KKG&R inexplicably filed the complaint solely in ***Petitioner's*** name instead of filing it in EULER's name, as subrogee of Petitioner. (Appendix at 15). That crucial mistake is where the problems begin.

4. *Respondents File A Counterclaim Against Petitioner And Serve The Counterclaim On KKG&R.*

On April 26, 2001, AKP and two of its shareholders (collectively, "Respondents") filed a counterclaim against Petitioner ("Counterclaim"). Respondents mailed a copy of the Counterclaim to KKG&R's office, as purported service upon Petitioner. Petitioner received no notice that a Counterclaim had been filed, nor did Petitioner ever retain KKG&R to defend the Counterclaim. (Appendix at 5, Ex. 1, ¶15).

On June 4, 2001, KKG&R filed an Answer to the Counterclaim and Affirmative Defenses on behalf of Petitioner—again, without Petitioner's authorization, knowledge or participation. (Appendix at 14).

5. *KKG&R Withdraws And A Default Is Entered Against Petitioner.*

On July 18, 2001, the trial court granted KKG&R's unopposed motion to withdraw from the case. The trial court ordered, in pertinent part, that KKG&R was to provide Petitioner with notice of the court's order and ordered Petitioner to file a substitute appearance within 30 days or a default may be entered on the Counterclaim. (Appendix at 12). Petitioner, however, never received a copy of the July 18, 2001 Order. (Appendix at 5, Ex. 1, ¶16).

Without notice of KKG&R's withdrawal, and not being the real party in interest, Petitioner did not file an appearance within the 30 days allotted by the trial court. On August 28, 2001, Petitioner, without notice, did not appear at the pretrial conference and the trial court entered a default against Petitioner.[1] (Appendix at 10).

6. *Respondents Move For Entry Of Judgment On Default Against Petitioner For Over $2.5 Million – And Serve Notice Of The Hearing Upon Petitioner By Mail, In Italy, Which Is Received The Night Before The Hearing On The Motion In Michigan.*

On May 1, 2002, Respondents moved for entry of a judgment on the default. (Appendix at 9). On that same day, Respondents sent notice of the motion, in English only, to

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[1] In September 2001, Petitioner received a copy of the default and faxed it to EULER SIAC for an explanation, which was not forthcoming. On October 16, 2001, Petitioner received an additional copy of the default and again sent it to EULER SIAC for explanation. EULER responded with a letter to Petitioner stating: "After receiving the attached documents, it is recommended they be ignored since the case was dismissed and no further action was being taken." (Appendix at 5, Ex. 1, ¶22). On November 9, 2001, Petitioner was advised that the collection action had been concluded. (*Id.*, ¶¶19-23.) Nothing else happened in the case until May 2002.

Petitioner, in Italy, by U.S. mail. (Appendix at 8). The hearing on Respondents' motion was set to take place on May 15, 2002 at 8:30 a.m. (Appendix at 5, Ex. 1, Internal Ex. M). Petitioner, in Italy, did not receive the notice until May 14, 2002, ***on the eve of the hearing Michigan***. (*Id.*, Ex. 1, ¶24) Petitioner promptly sent the motion to counsel in the United States for an explanation, but this transmission was not received until after 8:30 on the morning of May 15, 2002.

At the hearing, the trial court awarded Respondents all damages requested against Petitioner—totaling more than $2.5 million. (Appendix at 6; Appendix at 7).

7. *Petitioner Moves to Set Aside Default and Default Judgment*

On June 5, 2002, within the period of time prescribed by Michigan law to move to set aside such a judgment, Petitioner (represented by its own counsel for the first time in the litigation) filed a motion to set aside the default and judgment. MCR 2.603(D) In the motion, which was supported by the affidavit of Mauro Galanti (Petitioner's President), Petitioner argued, in pertinent part, that: (1) the Complaint had been filed by KKG&R and EULER in Petitioner's name without Petitioner's participation or direction (Petitioner having already been made whole by EULER); and, (2) that Petitioner did not receive adequate notice of the default judgment hearing.

On June 12, 2002, the trial court denied Petitioner's Motion to Set Aside the Default and Default Judgment. In doing so, the trial court refused to address the issue of whether Petitioner was, in fact, a party to the lawsuit. Specifically, the trial court stated that it was "***not up to this court to determine who is the real party in interest but simply to see that notices are given to - to the plaintiff and the counter-defendant.***" (Appendix at 4, pp. 17-18 (emphasis added)). Astonishingly, the trial court held that, even

if Petitioner was not a real party-plaintiff, that fact would not "overcome the numerous notices and attempts to get the attention of Intercontinental." (*Id.*, p. 18). On that basis, the trial court erroneously exercised personal jurisdiction over Petitioner, found that notice of the default hearing was sufficient and, accordingly, denied Petitioner's motion to set aside the default - thereby allowing its $2.5 million judgment to stand.

8. *The Court of Appeals Affirms The Default.*

On July 7, 2002, Petitioner appealed, as a matter of right, from the trial court's denial of the Motion to Set Aside the Default to the Michigan Court of Appeals. In the Court of Appeals, Petitioner argued, amongst other things, that: (1) the trial court never acquired personal jurisdiction over Petitioner because EULER was the real party in interest and KKG&R wrongfully named Petitioner as plaintiff to the action, (Appendix at 2, p. 3); and, (2) Petitioner was denied due process because it did not receive reasonable notice of the default judgment hearing, (*Id.*, pp.1-3).

On March 18, 2004, the Court of Appeals panel issued its opinion. (Appendix at 2). The Court of Appeals rejected Petitioner's personal jurisdiction and due process arguments, despite the requirement of MCR 2.201(b) that "an action must be prosecuted in the name of the real party in interest," and affirmed the entry of the default, but reduced the amount of the default judgment to $1,552,012.97. In affirming the trial court's entry of default and default judgment, the Court of Appeals, like the trial court, ignored the issue of whether Petitioner was, in fact, a real party-plaintiff to the action. Though the Court of Appeals did not address the issue of whether Petitioner was a party or non-party to the litigation, it opined, nonetheless, that Petitioner received adequate notice. Instead of addressing the issue, the Court of Appeals noted that "[i]f plaintiff's attorney of record improperly represented

himself as the attorney for the plaintiff, plaintiff's remedy lies in a suit against its counsel." (Appendix at 2, p. 3).

9. *The Michigan Supreme Court Declines Review Of Petitioner's Appeal.*

On April 29, 2004, Petitioner filed a petition for review of the Michigan Court of Appeals decision with the Michigan Supreme Court. On October 25, 2004, the Michigan Supreme Court declined review of the Petitioner's appeal. (Appendix at 1).

REASONS FOR GRANTING CERTIORARI

The Petition should be granted because the Michigan Circuit Court for Oakland County ("trial court") and the Michigan Court of Appeals ("Court of Appeals") have decided an important federal question in a way that conflicts with the decisions of this Court regarding due process under the Fourteenth Amendment and, by doing so, have deprived Petitioner of its property in the amount of $1,552,012.97, plus interest and costs.[2]

The Fourteenth Amendment to the United States Constitution provides:

> No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any state deprive any person of life, liberty or property without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., 14th Amend. (emphasis added). In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70

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[2] Petitioner is entitled to the due process protections of the Fourteenth Amendment. *Grosjean v. American Press Co.*, 297 U.S. 233, 244 (1936) ("[A] corporation is a 'person' within the meaning of the equal protection and due process clauses . . .")

S.Ct. 652, 657 (1950), the Supreme Court defines the due process requirements of notice. Specifically, in *Mullane*, the Court explains that:

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is ***notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections***. The notice must be of such nature as reasonably to convey the required information . . . ***and it must afford a reasonable time for those interested to make their appearance***.

Id. (internal quotations omitted)(emphasis added).

The trial court and Court of Appeals entered and affirmed, respectively, a default judgment against Petitioner in the amount of $1,552,012.97. In doing so, both courts acknowledged the possibility that Petitioner may have been a non-party rather than a real party-plaintiff to the litigation. (Appendix at 4, pp. 17-18; Appendix at 2, p. 3). Although the issue of whether Petitioner was a party to the litigation determines the type of notice and service required, both courts ignored this issue in rejecting Petitioner's argument that it did not receive notice of the Counterclaim and default judgment hearing consistent with due process.

The trial court and Court of Appeals deprived Petitioner of its right to due process by declining to determine whether Petitioner was a real party-plaintiff to the action. In Michigan, "[a]n action must be prosecuted in the name of the real party in interest . . ." MCR 2.201(B). "The subrogee is generally recognized as the real party in interest." *See Sinai Hospital of Detroit v. Sivak*, 88 Mich.App. 68, 72, 276 NW2d 518, 520 (1979) (insurer, not insured, was the real party in interest and action was required to be brought in name of insurer). "Generally, an insured, who no longer has any interest in the recovery, cannot sue." *Id.*

KKG&R was obligated to name EULER as the subrogee of Petitioner and, therefore, the real party in interest. Specifically, EULER, through its insurance contract with Petitioner, became a subrogee to Petitioner and was vested with the right to pursue a collection action against AKP. (Appendix at 5, Ex. 1, ¶11.) Accordingly, KKG&R was obligated to file suit in the name of EULER, the real party in interest. See MCR 2.201(B); *see also Sinai Hospital*, 88 Mich App at 72.

Furthermore, as Petitioner repeatedly explained to the trial court and Court of Appeals, KKG&R had filed the Complaint solely in Petitioner's name without Petitioner's authorization, knowledge or participation. (Appendix at 4; Appendix at 5).

In denying Petitioner's Motion to Set Aside the Default, the trial court erred in ruling that it was not required to determine the real party in interest as long as notices were sent to the named party-plaintiff. (Appendix at 4, pp 17-18). Specifically, the Court held:

> [T]he defense appears to be that Petitioner was not the real party in interest here and simply was told by real party in interest that it didn't have to do anything, and as also presented what—I'm going to assume that there's a meritorious defense that has been presented.
>
> So I'm looking at the good cause and I think that there were numerous attempts by this Court to get the attention of Petitioner and ***its not up to this Court to determine who is the real party in interest but simply to see that notices are given to – to the plaintiff and to the counter-defendant.***

(*Id.*) (emphasis added). Because the trial court failed to determine whether Petitioner was a party to the litigation, the trial court erred in: (1) asserting personal jurisdiction over Petitioner because Petitioner never filed suit or was served with process for suit in Michigan; and, (2) ruling that any notices purportedly sent to Petitioner were proper, including,

but not limited to the May 15, 2002 hearing for entry of the default judgment.

Unfortunately, the Court of Appeals, like the trial court, declined to address the issue of whether Petitioner was the real party in interest and a party to the litigation, stating:

> . . . the proof of service indicated that the counterclaim was properly served on [Petitioner's] attorney, and the affidavit by one of [Petitioner's] officers indicates that [Petitioner] received notice on March 31, 2001, that defendant considered filing a counterclaim. ***If [Petitioner's] attorney of record improperly represented himself as the attorney for [Petitioner], [Petitioner's] remedy lies in a suit against its counsel.***

(Appendix at 2, p. 3) (emphasis added). The Court of Appeals' opinion on this matter, like that of the trial court, is based upon the faulty premise that KKG&R was authorized to accept service on behalf of Petitioner. Without a determination of whether Petitioner was the real party in interest, however, both the trial court and Court of Appeals could not, and should not, have determined that Petitioner was properly served with the Counterclaim or any subsequent pleadings.

I. PETITIONER WAS DENIED DUE PROCESS BECAUSE IT WAS NOT SERVED WITH THE COUNTERCLAIM UPON WHICH THE TRIAL COURT ENTERED A MULTI-MILLION DOLLAR DEFAULT JUDGMENT.

The trial court and Court of Appeals deprived Petitioner of due process by acknowledging the possibility that KKG&R did not represent Petitioner, yet finding that mailing the Counterclaim to KKG&R was sufficient service upon Petitioner. Indeed, if Petitioner was not the real party in interest, and therefore not a party to the litigation, Respondents would have been obligated to serve process upon

Petitioner pursuant to the Hague Convention on Service Abroad ("Hague Convention"), as both the United States and Italy are signatories to the treaty. *See Frankenmuth Mutual Ins. Co. v. Aco, Inc.*, 193 Mich App 389, 392-393; 484 NW2d 718 (1992). The Hague Convention "applies in all cases where there is occasion to transmit a judicial or extrajudicial document for service abroad." *Id.* at 392. The Hague Convention "preempts inconsistent methods of service prescribed by state law in all cases to which the convention applies." *Id.*

The Counterclaim was not served on Petitioner in Italy, much less pursuant to the Hague Convention. (Appendix at 16). Rather, the Counterclaim was mailed to the office of KKG&R. (*Id.*). KKG&R was not an authorized agent for the receipt of service of process or counsel for Petitioner. (Appendix at 5, Ex. 1, ¶¶12-15). Accordingly, without a determination as to whether Petitioner was the true party in interest, both courts erred in ruling that Petitioner had received proper service and/or notice. Only by determining who is the real party in interest could a ruling be made on which method of service/notice is correct: service of process in Italy upon Petitioner ***or*** service as was done in this litigation, by mailing a copy of the Counterclaim to KKG&R. Both the trial court and the Court of Appeals committed error in determining that Petitioner had been properly served and received proper notice.

Accordingly, Petitioner was denied a meaningful opportunity to be heard in the proceeding that triggered the default and was thus denied due process of law.[3] Due process

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[3] While Petitioner received a notice of the August 28, 2001 pre-trial conference from the trial court, it did not receive such notice until August 29, 2001—***after*** the hearing had already been conducted. (Appendix at 5, Ex. 1, ¶17). In any event, the notice did not indicate that: (1) KKG&R had withdrawn; or, (2) Intercontinental would be defaulted for failing to appear at the pre-trial conference.

"requires notice of the nature of the proceedings, an opportunity to be heard in a meaningful time and manner, and an impartial decisionmaker." *Traxler v. Ford Motor Co.*, 227 Mich App 276, 288; 576 NW2d 398 (1998); *see also Bye v. Ferguson*, 138 Mich App 196, 205-206, 360 NW2d 175 (1984)(holding that due process requires that a party receive actual notice of the withdrawal of his or her attorney before further proceedings are conducted); *Deeb v. Berri*, 118 Mich App 556, 563; 325 NW2d 493 (1982) (explaining that the failure to receive the requisite notice regarding default proceedings amounts to a denial of due process).

Moreover, if it was determined that Petitioner was not a party to the litigation, service of the Counterclaim upon Petitioner in Italy would have been required in compliance with the Hague Convention in order for the trial court to assert personal jurisdiction over Petitioner. Indeed, lack of notice must be considered a "jurisdictional" defect. *In re AMB*, 248 Mich App 144, 640 NW2d 262 (2001); *National Car Rental v. S & D Leasing, Inc.*, 89 Mich App 364, 367-370; 280 NW2d 529 (1979) (holding that the lack of actual notice to the plaintiff regarding a counterclaim was "sufficient to set aside the default" entered against the plaintiff).

II. PETITIONER WAS DENIED ITS DUE PROCESS BECAUSE IT DID NOT RECEIVE NOTICE OF THE DEFAULT JUDGMENT HEARING ON DAMAGES THAT WAS REASONABLE UNDER ALL THE CIRCUMSTANCES.

Even assuming, *arguendo*, the Counterclaim was properly served upon Petitioner, the award of damages should be vacated in its entirety because Petitioner was not given reasonable notice of the May 15, 2002 default judgment hearing on damages. "[O]nce a valid default is taken, the defaulting party is entitled to full participatory rights in any hearing necessary for the adjudication of damages." *Perry v.*

Perry, 176 Mich App 762, 767, 440 NW2d 93 (1989), *citing Wood v. DAME*, 413 Mich. 573, 583-585; 321 NW2d 653 (1982). A damages hearing is necessary where the amount of damages is unliquidated. See, e.g., *American Central Corp v. Stevens Van Lines*, 103 Mich App 507, 513; 303 NW2d 234 (1981). Denial of the right to fully participate in the damages hearing after a default constitutes a denial of the constitutional right to due process and is reversible error. *See, e.g., Perry*, at 770; *see also Meyer v. Walker Land Reclamation, Inc.*, 103 Mich App 526, 541; 302 NW2d 906 (1981).

Petitioner did not receive notice "reasonably calculated under all the circumstances" to "afford [it] an opportunity to present its objections" to the default judgment. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657 (1950). The United States Supreme Court explains that :

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality ***is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections***. The notice must be of such nature as reasonably to convey the required information . . . ***and it must afford a reasonable time for those interested to make their appearance***.

Id. (emphasis added) (internal citations omitted). A notice of a hearing for a default judgment, in English only, that is sent by U.S. Mail to an Italian speaking party in Italy—and which is received on the eve such hearing is to be held in Michigan—is not notice reasonably calculated to afford an opportunity to appear and present objections.

The Michigan Court of Appeals erred in holding that Petitioner's receipt of notice, in Italy, on the day before the default judgment hearing in Michigan, was sufficient due process. Specifically, the Court of Appeals found that the

notice given to Petitioner was sufficient to satisfy due process because: (1) it was served in compliance with Michigan Court Rules governing notice; (2) Petitioner received actual notice of the hearing on the default judgment; and, (3) Petitioner had notice that a default had been entered. (Appendix at 2, p. 2); *see* MCR 2.603; *see also* MCR 2.107(C)(3). Under MCR 2.603, the party seeking judgment on a default must give the defaulted party at least seven (7) days notice before entry of the requested judgment. MCR 2.603(B)(1); *Dollar Rent-A-Car Systems v Nodel Constr. Co, Inc.*, 172 Mich App 738, 744; 432 NW2d 423 (1988). Under MCR 2.107, service is complete upon mailing. MCR 2.107(C)(3).

Assuming, *arguendo*, that Respondents served notice consistent with Michigan statute and received the notice before the hearing began, "process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 314, 70 S.Ct. at 657. Indeed, the circumstances surrounding the notice at issue in effect rendered the notice meaningless. On May 1, 2002, Respondents deposited notice of the May 15, 2002 hearing in the U.S. Mail, thereby purportedly complying with MCR 2.603(B)(1). On May 14, 2002, *thirteen (13) days later*, Petitioner received notice of the hearing to take place the next morning.[4] (Appendix at 5, Ex. 1, ¶24). Nothing in the record

[4] This case illustrates the need for due process review beyond mere compliance with state statutes regarding notice. Indeed, following the Court of Appeals' reasoning, the notice to Petitioner would have been adequate even if mailed on May 8, 2002 because such service would have comported with MCR 2.603(B)(1) since the notice was mailed seven (7) days in advance of the hearing. However, as demonstrated by the undisputed record in this case, it took thirteen (13) days from mailing for the notice of the default hearing to reach Petitioner in Italy. Accordingly, if the notice was mailed on May 8, 2002, assuming thirteen (13) days delivery time, the notice would not have been received by Petitioner until May 21, 2002—six (6) days after the hearing took place. Under these circumstances, MCR 2.603(b)(1) cannot pass constitutional muster because it is not calculated to provide a party with reasonable opportunity to be heard and defend itself.

refutes this fact. Moreover, the notice was sent in English only to an Italian recipient—located in Italy - that does not "speak or read the English language to any significant or meaningful degree." (*Id.*, Ex. 1, ¶2).

Receiving notice the day before the hearing on the entry of default judgment did not afford Petitioner reasonable time to interpret the notice, retain counsel on a different continent and appear the very next morning at the hearing to raise objections. Petitioner simply did not receive notice that was "reasonable under the circumstances" and, accordingly, was denied its right to due process.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner, Intercontinental Electronics S.p.A., respectfully requests that the Court grant its Petition for Writ of Certiorari.

Respectfully submitted,

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